IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 953 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
CHAUDHARY PATEL JETHABHAI RAMABHAI & 3 - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 21.05.1993 passed by the learned Judicial Magistrate, First Class, Dehgam in Criminal Case No. 1357 of 1989 whereby, the respondents – accused persons were acquitted of the charges

levelled against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 05.11.1989 at around 0930 hrs. while the complainant and his son were doing agricultural work in their field, respondent no. 1 herein began to break the passage from where the water used to reach his agricultural field. When the complainant objected to the same, respondent no. 1 & 2 hurled abuses at him and, thereafter, both of them started assaulting him with a sharp-edged weapon. On hearing the shouts of the complainant, the son of the complainant reached the scene of offence and at that time, the respondent no. 1 inflicted a shovel blow on the head of the son of the complainant. During that time, respondents no. 3 & 4 reached the scene of offence and they also started hurling abuses at the complainant. Thereafter, several villagers gathered at the scene of incident.

2.2 A complaint with respect to the aforesaid offence was filed against the respondents before Dehgam Police Station and it was registered as I – C. R. No. 314 of 1989. As sufficient material was found against the respondents, charge-sheet was filed against them before the Court of learned J.M.F.C., Dehgam and, ultimately, trial was conducted. In order to prove the guilt against the respondents, the prosecution has examined in all seven witnesses namely, PW – 1 Gebabhai Pujabhai Patel at Exhibit – 25, PW – 2 Amrutbhai Gebabhai at Exhibit – 27, PW – 3 Bhikhabhai Muljibhai Patel at Exhibit – 28, PW – 4 Shaileshkumar

Durgeshbhai Raval at Exhibit – 40, PW – 5 Motibhai Gebabhai at Exhibit – 45, PW – 6 Babubhai Valabhai at Exhibit – 48, PW – 7 Somabhai Gebabhai at Exhibit – 50 and has also relied upon documentary evidence, more particularly, the complaint at Exhibit – 26. At the end of trial, the learned Magistrate acquitted the respondents of the charges levelled against them.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach

> of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 Having gone through the impugned judgment and order passed by the Court below, it appears that the trial Court has acquitted the respondents while granting them the benefit of doubt. No independent witness has been examined by the prosecution though the incident in question took place in broad day-light and that to at a time when a majority of the persons would be in their

field doing agricultural work. Moreover, there are several contradictions in the story narrated by the prosecution witnesses before the police in the form of their statements and before the trial Court in the form of their depositions.

7.0 It also appears from the record that for the alleged incident in question, the Investigating Officer had also filed a Chapter Case against the complainant and his son on the one side and the respondents and two other accused persons on the other side before the District Magistrate, Dehgam. However, before the Court below, the prosecution has not given any explanation about the filing of any such Chapter Case. The case of the respondents is that the injuries in question sustained by the complainant and his son were caused on account of the scuffle that took place between the aforesaid two accused persons and the complainant and his son for which the Chapter Case in question came to be filed and that they were not caused by the respondents. The trial Court has acquitted the respondents of the alleged offence in question since there was not an iota of evidence on record pointing towards the guilt of the respondents.

8.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion

and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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